

## Testimony By Mr. Pope Barrow

House Legislative Counsel

Thank you for the opportunity to testify at this important hearing. First let me take this opportunity to explain functions and duties of our office.

### Functions and Duties of the Office of the Legislative Counsel

The Office of the Legislative Counsel is the legislative drafting service for the House of Representatives. Under our statutory charter, the purpose of the Office is to advise and assist the House, its committees, and Members in the achievement of a "clear, faithful, and coherent expression of legislative policies" (2 U.S.C. 281a). Using the services provided by our office is voluntary, not mandatory. However, in practice, we provide legal assistance in connection with virtually every bill, resolution, amendment, and conference report introduced or offered in, or under consideration by, the House or one of its committees or subcommittees.

The office is nonpartisan and neutral as to issues of legislative policy. Since our inception, we have provided legislative drafting assistance to Members representing all political viewpoints while maintaining confidentiality with each client.

We also provide other related assistance to committees in connection with our basic legislative drafting responsibilities.

One aspect of this ancillary assistance is the preparation of reported bills on which we have worked. We provide these bills in the format needed by the Clerk of the House and the Government Printing Office. We also prepare a portion of each committee report in which the changes made in existing law are depicted. (This is known as the Ramseyer, so named after the Congressman who sponsored House Rule XIII (3)(e) requiring that such changes be depicted in each committee report.) These functions have gradually been centralized in our office on a de facto basis because it is more efficient to do them in one place and because we are the only office in the House with both the software and a database of existing laws needed to create these documents.

The work of our office is highly dependent upon information technology and also upon being able to interact efficiently with other House institutions, especially the Clerk of House and the various House committees. Unfortunately, however, when it comes to information technology, coordination has fallen short, especially between our office and the various House committees. This sometimes leads, as the Gartner Report observes, to chaos and inefficiency. It impedes our ability to fulfill our mission. It is certainly not in the best interests of the House.

#### IT Related Questions We are Often Asked

Here are some questions related to information technology that attorneys in our office are often asked by Members and their staff.

Why does it take so much longer now for your office to prepare drafts than it did just a few years ago?

Why can't we edit your drafts with our software and send them back to you to review and revise?

Why can't you show me in the bill what effects amendments will have on the

bill?

Why can't you show me what effect a bill will have on existing law?

Why is your office no longer giving our committee up-to-date versions of the laws within our jurisdiction?

Why can't we always amend the United States Code instead of individual Public Laws?

The Gartner report addresses all of these questions. I will address them one by one.

#### Key Findings of the Gartner Report

The Gartner Report discusses the existing IT structure of the House of Representatives and offers a vision for the possible future of IT management in the House. I agree with the findings of the Gartner Report, particularly with respect to the fragmented structure of existing IT planning and implementation. I agree that the individual compartmentalized "silos" of IT development lead to business decisions that are inefficient and not supportive of the mission of the entire House of Representatives.

I also endorse the recommendation in the report that IT decisions should be coordinated among all House offices and that a single entity be responsible for ensuring that the technology decision-making process serves the needs of the entire House. I endorse the conclusion that the key to solving the IT problems in the House and bringing the House into the twenty-first century is

not a question only of which software to buy or how many servers are needed. Instead, the key is deciding how IT decisions, and related business decisions, can be made for the whole House in a manner that will further the interests of the whole House.

The report describes how each office involved in the legislative process, including our office, is "independently responsible for identifying, acquiring, and supporting technology to conduct its work...[with] little coordination or standardization of processes, formats, or technologies." (Vision of the Future of Technology in the House of Representatives, page 2.) The report describes the redundancies and inefficiencies inherent in the existing system. The vision section of the report explains how these could be eliminated as well as how the House could expand electronic access to legislation, provide more timely access to materials, and improve the ability of Members to see and understand the changes to existing legislation proposed by new legislation. The report points out that many of these capabilities have already been put in place in state and foreign legislative bodies.

The key findings in the report are consistent with our own experience. All of our existing software was developed either in our "silo" or in the Clerk's "silo," without the participation of the committees and Members whom we serve.

Let me address how this situation developed. In the past few years, our existing document composition software has become obsolete, and has begun to suffer massive memory breakdowns on large bills. Rather than continue to train new people in such an antiquated system, we needed to bring a new IT solution on line. Without IT expertise of our own, we usually rely on other House offices.

About 20 years ago, the GPO developed XYWrite with GPO locator codes, and we adopted and used that software until the Clerk's office provided us with the new XML application.

The focus of the Clerk's solution, like the GPO solution years ago, was necessarily limited because neither our office nor the Clerk's Office has the authority, responsibility, or funding to do anything on an institution-wide scale. Clearly, we have no authority to provide IT solutions for committees or Members. But who does?

This question requires an institution-wide answer such as that envisioned by the Gartner Report. The envisioned solution would take into account the overall needs of the entire House and all of its various elements when particular IT services and equipment are purchased or developed in-house by a House office.

#### The XML Editor: An Example of Compartmentalized IT Development

For almost 10 years, the Clerk of the House has been working to replace the obsolete text composition and editing program (XYWrite with GPO locator codes) used by the House and Senate Enrolling Clerks to process legislation and by the GPO for printing. XYWrite is a DOS program that is no longer supported by Windows-based computer operating systems. The company that developed XYWrite has long since disappeared.

The Clerk, with the cooperation of our office, has been developing new document composition software to replace XYWrite using XML (extensible markup language) for all bills and resolutions of the House and Senate. The new software allows instant publishing on the Web and offers a number of useful search features for downstream users of legislative documents. Most important, it provides opportunities for the Clerk's office to function more efficiently

by automating numerous aspects of the Clerk's work.

We participated in the development of this software in order to replace our 30-year old software. We are currently using the Clerk's XML program for the composition and editing of most legislative documents.

While cooperation between our office and the Clerk's office is an unusual example of two House institutions joining together to bring an IT solution on line, the final software product is still a product that best fits the Clerk's operations. Unfortunately, it does not fully meet our needs. The needs of our clients in other House offices were also not included. The former Clerk was aware of this problem but did not feel that he had the authority, or the budget, to expand the project beyond the scope of his own duties. We were included because it facilitated the Clerk's effort to process legislation in XML to have it created in XML to start with.

Despite some advantages for downstream users, the new XML software is significantly slower, less reliable, and more difficult for the attorneys in our office to work with than our previous XYWrite system. The XML system is highly structured and automated to the point where the system itself can create drafting errors beyond the operator's control. This has caused stress not only within our office but also between our office and our clients, who often have tight deadlines.

The Gartner Report mentions that staffs of Members and committees are very frustrated by the difficulty they experience trying to revise and edit documents produced by our office. (Gartner Consulting: Information Technology Assessment, To-Be Vision Report, page 23). Our clients often wish to revise the draft legislative language provided by our office and have that language highlighted and inserted into the text we provided to them. No Member's staff is working with the XML editor. No committees can use it even at a rudimentary level. Since these staffs do not have access to the XML editor used by our office and the Clerk's office or the requisite training,

and--more important -- since the program does not provide the capability to track changes, this collaboration between our office and our clients is not possible. By contrast, in other business situations the ability to perform this kind of collaboration is taken for granted.

Even though the XML editor could potentially be further developed to meet these collaboration needs, the Clerk could not justify expanding the effort very far beyond the needs of his own office. It also would have been more expensive and would have added even more complexity to the job of customizing an already complex piece of software.

I would reiterate that the failure to provide collaboration features in the XML editor was not purely a technology question. It was also a question of the limited mission and budget for developing an IT solution.

Why Can't Members See How a Bill  
Would Change Existing Law?

Why is it so difficult to determine the textual changes in existing law made by a legislative proposal?

A number of Members have raised that question with me. Members who

have served in State legislatures, where this feature is not only available but required, are particularly puzzled as to why this capability is not available in the House. The Gartner Report notes that committee and Member staffs indicated a strong desire to better understand the effect of proposed bills on existing law (Gartner Consulting: Information Technology Assessment, Final Gap Analysis Report, page 47; Information Technology Assessment, To-Be Vision Report, page 8). Clearly the technology can be built to do this and is in place in other legislative bodies. Why not here?

Again, the answer is not purely an information technology question.

#### Reason One

One reason is that in building XML software, the mission did not include the needs of committees and Member's staff. The XML software was limited to bill, amendment, and resolution composition and editing. It did not address the other critical functions that our office performs for the committees, including the preparation of Ramseyers for committee reports and the maintenance of compilations of existing law.

The unfortunate result of our inability to build Ramseyers in the new XML editor is that we either needed to continue using our old software to perform that function or create new XML software on our own. We chose the second alternative. But while we are developing new software, we are still trying to prepare Ramseyers manually, using our obsolete XYWrite program. The manual preparation of Ramseyers is a time-consuming and exacting process requiring at least three trained paralegals. In recent years, the time between the date on which a committee orders a bill reported and the date on which the committee report, including the Ramseyer, is filed has been much abbreviated, allowing us less time.



The result is that our ability to provide those services to the committees has deteriorated or, in some cases, disappeared entirely.

This failure has a House-wide impact. A committee report without a Ramseyer does not comply with the Rules of the House. To consider the bill, the Rules must be waived. Such a waiver can be controversial.

The software to automatically produce electronic versions of Public Laws, as amended by subsequent Public Laws, and the software to show the effect of proposed bills on existing law is possible to create. This could be done with a substantial degree of automation, requiring less human intervention than is now the case. Other legislatures are already using this kind of technology. It would markedly improve our productivity.

In fact, within our own "silo," the Legislative Counsel's office is attempting to build some parts of this kind of software so that we can better meet the committees' need for Ramseyers.

However, by developing this technology in our own "silo" without any coordination with other House offices, duplication of effort and inefficiency will still exist.

## Reason Two

The other reason why it is difficult to depict for Members and committees the changes made in existing law by a bill is even more fundamental. We cannot show the effect of a bill on existing law in an accurate and official way unless we have an accurate, current, and official version of existing law. We do not have this for most Federal law. Nor does anyone else.

It is little known that, for most Federal law, there is no current official as-amended version either in paper or electronic form. This is almost an emperor-has-no-clothes kind of thing. Most people are amazed to learn that, because the bulk of Federal law is not part of the codified "positive " law titles of the United States Code, there is no official version in existence anywhere showing amended Public Laws, as amended by subsequent Public Laws. The non-positive law titles are completely different in form and numbering and cannot be used in legislation. Even those laws which are codified in positive law titles of the US Code are often not available until months or years after Congress has amended them.

The Law Revision Counsel is responsible for providing the official printed volumes containing the positive law titles of the United States Code and for assembling the other laws into other volumes of the United States Code. However, they do not have the technology or budget to provide any of this material on a current basis or in electronic form in the XML format now needed by our office.

Members who have served in State legislatures are used to having all State laws in a single official State code, usually available in printed or electronic form on a current basis. That is not the case for Federal law.

Most of the United States Code titles are not "positive" Federal law. Even the positive law titles are not available on a current basis. To be positive Federal law, a US Code title must be enacted as such by Congress. Only 24 of the 50 titles, less than one third of Federal law, are officially codified in the US Code. The effort to codify all Federal law in the United States Code foundered many years ago due to the fact that there is no great constituency pushing for it to happen. The Judiciary Committee has the sole authority to bring a new US Code title to the House floor, but this is a huge job. Making it more difficult is that fact that most titles cover substantive matters that are not within that committee's sole jurisdiction. Other committees would be very wary of not being involved in a codification of laws over which they have jurisdiction since the codification process inevitably involves making some changes in structure and language.

So we are left with about two-thirds of Federal law in uncoded form.

The official versions of non-positive laws are the Public Laws certified by the Archivist of the United States. However, after one of those Public Laws is amended, there is no entity charged with the responsibility for providing the Congress or the public with an official amended version. Anyone in government or outside of government is free to cut and paste the new public law (often many of them) into the original and provide their best guess as to what the official law, if it existed, would look like.

Our office, various universities, and private businesses all do this. However, none of those documents are official, and their degree of accuracy is unknown.

This means that any document provided by our office or anyone else that depends on an amendment to existing law will rest on an unofficial source, regardless of the technology used.

## Our Compilations of Existing Law

Since we are often called upon to draft amendments to an amended law (and prepare Ramseyers) almost immediately after that law has been amended, our support staff has been, for many years, manually preparing a current electronic database of frequently amended Federal laws. We adopted this "work-around" solution to enable us to draft new amendments to laws that have previously been amended and to provide Ramseyers to the committees. As an ancillary service to that work, we have also provided to committees, upon request, "compilations" of the various laws within their jurisdiction, even though they are unofficial. The committees often print those documents for their own use.

With the introduction of XML, this unofficial database has become increasingly difficult for us to maintain. As explained above, the XML software does not allow us to create and edit our in-house compilations of existing law or to easily extract material from those compilations to be used in the drafting process or for the creation of Ramseyers. In order to create and use these essential documents in XML, we need to develop additional software to work with the XML program. In the meantime, we have ceased making customized compilations of existing law available to committees.

We have begun attempting to convert this database to XML and to automate the manual updating process in XML. This is essential if we are to continue to be able to meet the needs of our clients for a quick turn-around of legislation amending existing law and to be able to have the database of existing law for preparing Ramseyers.

Here again, however, we only have the authority and budget to provide a software solution that works within our own office. If the committee staffs and the Law Revision Counsel were working with us on this project, there would be an opportunity to develop software that would enable the House to provide, use, and maintain an updated version of Federal laws, whether codified in the U.S. Code or not. This is another instance of how the fragmented system of information technology development and deployment can lead to a dysfunctional situation and a duplication of effort.

In addition, we are also using unofficial XML versions of the codified titles of the US Code for purposes of drafting and Ramseyer preparation because the Law Revision Counsel (the office with responsibility in Congress for preparing the official version of the US Code) does not have the manpower and technology to provide this to the Congress or the public on a rapid as-needed basis.

#### Why Can't Members and Staff See How Amendments Would Change a Bill?

As noted in the Gartner Report, Members and staff would like to have the ability to see on their computer screens the textual effects of amendments on a pending bill at the time the amendment is offered. This would enable Members and staff to quickly and easily understand the effect of pending amendments, especially when a highly complex series of amendments is offered in committee or on the House floor.

If done manually, showing the effect of amendments on bills would be so laborious as to be nearly impossible. Theoretically, with XML technology, this could be done with further development of existing software. We would like to develop such a tool and use it for our own office. The necessary software could be based on the Ramseyer tool mentioned earlier that we are trying to develop. However, even if we were successful in building such software, our office certainly does not have the budget or authority to deploy it throughout the House. Nor would it be likely to be an ideal tool for other House offices.

There is no office within the House with the authority or ability to develop and deploy such a software tool for Members, committees, and subcommittees and on the House floor. Again, the Gartner Report has suggested the solution to the problem, an overall entity with responsibility for providing IT solutions that work for all components of the entire House.

## Conclusion

A key question raised by the Gartner study is the question of whether there is a technology solution to the questions and issues I have mentioned in this testimony.

The answer is "no." Compartmentalized software development by individual offices is not going to resolve these issues.

approach is needed. More important, the ultimate solution must have the imprimatur of the majority and minority House leadership.